



Susan Wengraf  
Councilmember District 6

CONSENT CALENDAR  
May 11, 2021

To: Honorable Mayor and Members of the City Council

From: Councilmember Wengraf (author), Councilmember Kesarwani (co-sponsor),  
and Councilmember Harrison (co-sponsor)

Subject: Support for SB-15

RECOMMENDATION

Send a letter of support for SB 15 (Portantino) Housing development: incentives: rezoning of idle retail sites, to Senators Portantino and Skinner, Assemblymember Wicks and Governor Newsom. SB 15 would incentivize affordable housing creation by providing grants to local governments who rezone idle retail sites to allow for affordable housing development.

FINANCIAL IMPLICATIONS

None

BACKGROUND

SB 15 seeks to incentivize local governments to convert idle retail sites into affordable housing by requiring HCD to issue grants to cities that rezone commercial sites to make residential an allowable use. In order to receive a grant, a city must rezone the site as a use by right, approve a housing development project affordable to low- and moderate-income households, impose certain labor standards, and issue a certificate of occupancy. The grant will be proportionate to the amount of housing available for those households if the development also includes a commercial component. The grant is equal to seven times the average amount of annual sales and use tax revenue generated by each idle site identified in the local government's application over the seven years immediately preceding the date of the local government's application. The goal is to offset the lost sales tax revenue that would have been generated from a commercial property.

We should support the bill for the following reasons:

- SB 15 would establish a state-funded grant program for local governments administered via HCD. The grants would encourage cities to shift to housing on such sites by supplying funds to municipalities to replace lost sales taxes from the commercial use of SB 15 sites.
- Under SB 15, cities would agree to allow affordable housing "by right," while still overseeing design review.

ENVIRONMENTAL SUSTAINABILITY

Potential for reduced greenhouse gas emissions as affordable housing provides opportunities for Berkeley workers to live closer to work.

CONTACT PERSON

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Council District 6

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Attachments:

1: Letter of Support for SB 15

2: [SB 15](#)

May 11, 2021

The Honorable Senator Portantino  
State Capitol, Room 5050  
Sacramento, CA 95814

**RE: SB 15 (Portantino) Housing development: incentives: rezoning of idle retail sites. Support from the Berkeley City Council.**

Dear Senator Portantino:

The City Council of the City of Berkeley hereby registers its support of Senate Bill 15, to incentivize local governments to convert idle retail sites into affordable housing by issuing State grants to cities that rezone commercial sites to make residential an allowable use.

This legislation supports state-wide efforts to meet Regional Housing Needs Assessment (RHNA) mandates with the tools of rezoning and state funding. Incentivizing the rezoning of idle shopping centers and big-box retail buildings allows cities to repurpose land and buildings to create affordable housing.

The City of Berkeley thanks you for your leadership on this important issue and urges your colleagues and the Governor to strongly support SB 15.

Respectfully,

Berkeley City Council

CC: Senator Nancy Skinner  
Assembly Member Buffy Wicks  
Governor Gavin Newsom

SENATE BILL

NO. 15

Introduced by Senator Portantino

December 07, 2020

An act to add Chapter 2.9 (commencing with Section 50495) to Part 2 of Division 31 of the Health and Safety Code, relating to housing.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 15, as amended, Portantino. Housing development: incentives: rezoning of idle retail sites. Existing law establishes, among other housing programs, the Workforce Housing Reward Program, which requires the Department of Housing and Community Development to make local assistance grants to cities, counties, and cities and counties that provide land use approval to housing developments that are affordable to very low and low-income households. This bill, upon appropriation by the Legislature in the annual Budget Act or other statute, would require the department to administer a program to provide incentives in the form of grants allocated as provided to local governments that rezone idle sites used for a big box retailer or a commercial shopping center to instead allow the development of ~~workforce housing~~. *housing, as defined*. The bill would define various terms for these purposes. In order to be eligible for a grant, the bill would require a local government, among other things, to apply to the department for an allocation of grant funds and provide documentation that it has met specified requirements, including certain labor-related requirements. The bill would make the allocation of these grants subject to appropriation by the Legislature in the annual Budget Act or other statute. The bill would require the department to issue a Notice of Funding Availability for each calendar year in which funds are made available for these purposes. The bill would require that the amount of grant awarded to each eligible local government be equal to 7 times the average amount of annual sales and use tax revenue generated by each idle site identified in the local government's application over the 7 years immediately preceding the date of the local government's application, subject to certain modifications, and that the local government receive this amount in one lump-sum following the date of the local

government's application. The bill, upon appropriation by the Legislature in the annual Budget Act or other statute, would authorize the department to review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards for this program and exempt those guidelines from the rulemaking provisions of the Administrative Procedure Act. *The bill would make its provisions operative on and after January 1, 2023.*

## **DIGEST KEY**

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## **BILL TEXT**

### **THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT**

### **AS FOLLOWS:**

#### SECTION 1.

Chapter 2.9 (commencing with Section 50495) is added to Part 2 of Division 31 of the Health and Safety Code, to read:

#### CHAPTER 2.9. Retail Site Rezoning Incentives 50495.

For purposes of this chapter:

- (a) "Applicant" means a public agency or private entity that submits an application to a local government to undertake a ~~workforce housing~~ *housing, as defined in subdivision (k)*, development project on sites rezoned pursuant to this chapter.
- (b) "Big box retailer" means a store of greater than 75,000 square feet of gross buildable area that generates or previously generated sales or use tax pursuant to the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code).
- (c) "Commercial shopping center" means a group of two or more stores that maintain a common parking lot for patrons of those stores.
- (d) "Idle" means that at least 80 percent of the leased or rentable square footage of the big box retailer or commercial shopping center site is not occupied for at least a 12-month calendar period.
- (e) "Local government" means a city, county, or city and county.
- (f) "NOFA" means Notice of Funding Availability.
- (g) "Project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500 of the Public Contract Code.
- (h) "Sales and use tax revenue" means the cumulative amount of revenue generated by taxes imposed by a local government in accordance with both of the following laws:
  - (1) The Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code).
  - (2) The Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251) of Division 2 of the Revenue and Taxation Code).
- (i) "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.
- (j) (1) "Use by right" means that the local government's review of a ~~workforce housing~~ *housing, as defined in subdivision (k)*, *development* does not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a

“project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code. Any subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act (Division 2 (commencing with Section 66410) of Title 7 of the Government Code).

(2) A local ordinance may provide that “use by right” does not exempt the use from design review. However, that design review shall not constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.

(k) ~~“Workforce housing”~~ *“Housing”* means an owner-occupied or rental housing development in which 100 percent of the development project’s total units, exclusive of a manager’s unit or units, are for lower income households, as defined in Section 50079.5, or for moderate-income households, as defined in Section 50053. Units in the development shall be offered at an affordable housing cost, as defined in Section 50052.5, or at affordable rent, as defined in Section 50053, except that the rent or sales price for a moderate-income unit shall be at least 20 percent below the market rate for a unit of similar size and bedroom count in the same neighborhood in the city, county, or city and county in which the housing development is located. The developer of the ~~workforce~~ housing shall provide the local government with evidence to establish that the units meet the requirements of this subdivision. All units, exclusive of any manager’s unit or units, shall be restricted as provided in this subdivision for at least the following periods of time:

(A) Fifty-five years for units that are rented. However, the local government may require that the rental units in the housing development project be restricted to lower income households for a longer period of time if that restriction is consistent with all applicable regulatory requirements for state assistance.

(B) Forty-five years for units that are owner occupied. However, the local government may require that owner-occupied units in the housing development project be restricted to lower income households for a longer period of time if that restriction is consistent with all applicable regulatory requirements for state assistance.

#### 50495.2.

Upon appropriation by the Legislature in the annual Budget Act or other statute, the department shall administer a program to provide incentives in the form of grants allocated in accordance with this chapter to local governments that rezone idle sites used for a big box retailer or a commercial shopping center to instead allow the development of ~~workforce housing~~ *housing, as defined in subdivision (k) of Section 50495*.

#### 50495.4.

In order to be eligible for a grant under this chapter, a local government shall do all of the following:

(a) Rezone one or more idle sites used for a big box retailer or commercial shopping center to allow ~~workforce housing~~ *housing, as defined in subdivision (k) of Section 50495*, as a use by right.

(b) Approve and issue a certificate of occupancy for a ~~workforce housing~~ *housing, as defined in subdivision (k) of Section 50495*, development on each site rezoned pursuant to subdivision (a) for which the local government seeks an incentive pursuant to this chapter.

(c) Impose the requirements described in Sections 50495.5 and 50495.5.1 on all applicants.

(d) Apply to the department for an allocation of grant funds and provide documentation that it has complied with the requirements of this section.

#### 50495.5.

For purposes of subdivision (c) of Section 50495.4, a local government shall impose all of the following requirements on all applicants:

(a) (1) For an applicant that is a public agency, the applicant shall not prequalify or shortlist, or award a contract to, an entity for the performance of any portion of the ~~workforce housing~~ *housing, as defined in subdivision (k) of Section 50495*, development project unless the entity provides an enforceable commitment to the applicant that the entity and its subcontractors at every tier will use a skilled and

trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades.

(2) Paragraph (1) does not apply if any of the following requirements are met:

(A) The public agency applicant has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the public agency applicant before January 1, ~~2021~~ 2023.

(C) The entity has entered into a project labor agreement that will bind the entity and all of its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(b) For an applicant that is a private entity, the applicant shall do both of the following:

(1) Demonstrate to the local government that either of the following is true:

(A) The entirety of the ~~workforce~~ *housing housing, as defined in subdivision (k) of Section 50495*, development project is a public work for purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(B) If the project is not in its entirety a public work, all construction workers employed in the execution of the project will be paid at least the general prevailing rate of per diem wages for the type of work and geographic area, as determined by the Director of Industrial Relations pursuant to Sections 1773 and 1773.9 of the Labor Code, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(2) Demonstrate to the local government that a skilled and trained workforce will be used to perform all construction work on the project.

#### 50495.5.1.

(a) If a ~~workforce~~ *housing housing, as defined in subdivision (k) of Section 50495*, development project is subject to subparagraph (B) of paragraph (1) of subdivision (b) of Section 50495.5, then, for those portions of the project that are not a public work, all of the following shall apply:

(1) The private entity applicant shall ensure that the prevailing wage requirement is included in all contracts for the performance of the work on the project.

(2) All contractors and subcontractors shall pay to all construction workers employed in the execution of the work at least the general prevailing rate of per diem wages, except that apprentices registered in programs approved by the Chief of the Division of Apprenticeship Standards may be paid at least the applicable apprentice prevailing rate.

(3) (A) Except as provided in subparagraph (C), all contractors and subcontractors shall maintain and verify payroll records pursuant to Section 1776 of the Labor Code and make those records available for inspection and copying as provided by that section.

(B) Except as provided in subparagraph (C), the obligation of the contractors and subcontractors to pay prevailing wages may be enforced by the Labor Commissioner through the issuance of a civil wage and penalty assessment pursuant to Section 1741 of the Labor Code, which may be reviewed pursuant to Section 1742 of the Labor Code, within 18 months after the completion of the project, by an underpaid worker through an administrative complaint or civil action, or by a joint labor-management committee through a civil action under Section 1771.2 of the Labor Code. If a civil wage and penalty assessment is issued, the contractor, subcontractor, and surety on a bond or bonds issued to secure the payment of wages covered by the assessment shall be liable for liquidated damages pursuant to Section 1742.1 of the Labor Code.

(C) Subparagraphs (A) and (B) do not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires the payment of prevailing wages to all construction workers employed in the execution of the project and provides for enforcement of that obligation through an arbitration procedure.

(4) Notwithstanding subdivision (c) of Section 1773.1 of the Labor Code, the requirement that employer payments not reduce the obligation to pay the hourly straight time or overtime wages found to be prevailing shall not apply if otherwise provided in a bona fide collective bargaining agreement covering the worker. The requirement to pay at least the general prevailing rate of per diem wages does not preclude use of an alternative workweek schedule adopted pursuant to Section 511 or 514 of the Labor Code.

(b) An applicant that is a private entity subject to paragraph (2) of subdivision (b) of Section 50495.5 shall comply with all of the following requirements for the ~~workforce housing~~ *housing, as defined in subdivision (k) of Section 50495*, development project:

(1) The private entity applicant shall require in all contracts for the performance of work that every contractor and subcontractor at every tier will individually use a skilled and trained workforce to complete the project.

(2) Every contractor and subcontractor shall use a skilled and trained workforce to complete the project.

(3) (A) Except as provided in subparagraph (B), the private entity applicant shall provide to the local government, on a monthly basis while the project or contract is being performed, a report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code. A monthly report provided to the local government pursuant to this clause shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and shall be open to public inspection. A private entity applicant that fails to provide a monthly report demonstrating compliance with Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code shall be subject to a civil penalty of ten thousand dollars (\$10,000) per month for each month for which the report has not been provided. Any contractor or subcontractor that fails to use a skilled and trained workforce shall be subject to a civil penalty of two hundred dollars (\$200) per day for each worker employed in contravention of the skilled and trained workforce requirement. Penalties may be assessed by the Labor Commissioner within 18 months of completion of the project using the same procedures for issuance of civil wage and penalty assessments pursuant to Section 1741 of the Labor Code, and may be reviewed pursuant to the same procedures in Section 1742 of the Labor Code. Penalties shall be paid to the State Public Works Enforcement Fund.

(B) Subparagraph (A) does not apply if all contractors and subcontractors performing work on the project are subject to a project labor agreement that requires compliance with the skilled and trained workforce requirement and provides for enforcement of that obligation through an arbitration procedure.

#### **50495.6.**

(a) Upon appropriation by the Legislature in the annual Budget Act or other statute for purposes of this chapter, the department shall allocate a grant to each local government that meets the criteria specified in Section 50495.4 in an amount determined pursuant to subdivision (b). For each calendar year in which funds are made available for purposes of this chapter, the department shall issue a NOFA for the distribution of funds to a local government during the 12-month period subsequent to the NOFA. The department shall accept applications from applicants at the end of the 12-month period.

(b) The amount of grant provided to each eligible local government shall be as follows:

(1) Subject to paragraphs (2) and (3), the amount of the grant shall be equal to seven times the average amount of annual sales and use tax revenue generated by each idle site identified in the local government's application that meets the criteria specified in subdivisions (a) and (b) of Section 50495.4 over the seven years immediately preceding the date of the local government's application.

(2) For any idle big box retailer or commercial shopping center site rezoned by a local government in accordance with subdivision (a) of Section 50495.4 to allow mixed uses, the amount of grant pursuant to paragraph (1) shall be reduced in proportion to the percentage of the square footage of the development

that is used for a use other than ~~workforce housing~~; *housing, as defined in subdivision (k) of Section 50495.*

(3) If for any NOFA the amount of funds made available for purposes of this chapter is insufficient to provide each eligible local government with the full amount specified in paragraphs (1) and (2), based on the number of applications received, the department shall reduce the amount of grant funds awarded to each eligible local government proportionally.

(c) The department shall allocate the amount determined pursuant to subdivision (b) to each eligible local government in one lump-sum following the date of the local government's application.

**50495.8.**

Upon appropriation by the Legislature in the annual Budget Act or other statute, the department may review, adopt, amend, and repeal guidelines to implement uniform standards or criteria that supplement or clarify the terms, references, or standards set forth in this chapter. Any guidelines or terms adopted pursuant to this chapter shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

**50495.9.**

*This chapter shall be operative on and after January 1, 2023.*

